

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE***

Applicant: Michael TESAR et al.  
Title: ANTI-CD38 HUMAN ANTIBODIES AND  
USES THEREFOR  
Appl. No.: 10/588,568  
International Filing Date: 2/7/2005  
371(c) Date: 10/14/09  
Examiner: Anne Gussow  
Art Unit: 1643  
Conf. No.: 8662

**RENEWED PETITION FOR AN UNINTENTIONALLY DELAYED DOMESTIC  
PRIORITY CLAIM UNDER 37 C.F.R. § 1.78(a)(3)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Sir:

The Decision on Petition Under 37 C.F.R. 1.78(a)(6), dated July 7, 2011, dismissed Applicant's May 18, 2011 petition for acceptance of an unintentionally delayed domestic priority claim. The Decision noted that the sole defect was a failure to sign the ADS (page 1), and Applicant was invited to renew the Petition with a signed ADS (page 2).

Applicant hereby ***renews*** the petition for acceptance of an unintentionally delayed domestic priority claim filed on May 18, 2011, pursuant to 37 C.F.R. § 1.78(a)(3). A signed and dated ADS accompanies this submission. Attachments A, B, and C were previously submitted with the filing of May 18, 2011, and are not resubmitted. It is believed that all requirements are satisfied, and prompt notification of the same is respectfully sought.

**Benefit of priority sought**

Applicant seeks benefit of priority under 35 U.S.C. § 119(e) to U.S. Provisional Application No. 60/614,471, filed October 1, 2004.

**Priority is claimed and perfected in the parent PCT application**

This application is the U.S. National Stage of PCT/IB2005/002476 which claims benefit of the filing date of U.S. Provisional Application No. 60/614,471.

PCT/IB2005/002476, which had erroneously omitted reference to U.S. Provisional Application No. 60/614,471, was corrected at the PCT to include under (30) “60/614,471, 01 October 2004, US,” in a Correction of Entry in Section I of the PCT Gazette published on October 5, 2006 (see **Attachment A**). U.S. Provisional Application No. 60/614,471 was also reflected in the priority data on the front page of WO 2005/103083 A3 published on November 16, 2006, with the International Search Report (see **Attachment B**). A certified copy of U.S. Provisional Application No. 60/614,471, has been submitted to WIPO and is acknowledged as such in the “Related Documents on File” in the Documents tab of the WIPO website as of November 3, 2005 (see **Attachment C**). Accordingly, PCT/IB2005/002476 claims benefit of priority to U.S. Provisional Application No. 60/614,471.

**The intent to claim priority is evident in the U.S. national stage, but was not perfected because of failure to submit an Application Data Sheet**

Upon entry of the US National Stage of PCT/IB2005/002476, on August 4, 2006, in view of the above-identified corrections made in PCT/IB2005/002476, it was erroneously believed that no further action was necessary to perfect the priority claim in the present US National Stage Application.

Further, in the Declaration filed on October 14, 2009 (copy in the Image File Wrapper), U.S. Provisional Application No. 60/614,471 is listed among the applications for which benefit under 35 USC 119(e) is claimed. It is clear from the foregoing facts that Applicant intended to claim the benefit of priority to U.S. Provisional Application No. 60/614,471,

To date, however, the reference required by 35 U.S.C. § 120 and 37 C.F.R. § 1.78(a)(2) has not been made in the present application, and the records of the USPTO do not reflect any claim to U.S. Provisional Application No. 60/614,471. Therefore, a signed Application Data Sheet is submitted herewith to meet the reference required by 37 U.S.C. § 120.

**Delay was unintentional**

This error was only recently discovered. The entire delay between the date that this claim was due under 37 C.F.R. § 1.78(a)(2) and the date this claim is being filed was unintentional.

\* \* \*

The sole basis of Dismissal is believed to be overcome by this submission. Favorable action is solicited

The fee of \$1,410.00 for the requisite surcharge set forth in 37 C.F.R. 1.17(t) was paid on May 18, 2011. Should any further payments be required regarding this petition, the Commissioner is hereby authorized to charge them to Deposit Account No. 19-0741.

Respectfully submitted,

Date July 12, 2011

By Simon J. Elliott

FOLEY & LARDNER LLP  
Customer Number: 22428  
Telephone: (202) 295-4726  
Facsimile: (202) 672-5399

Simon J. Elliott  
Attorney for Applicant  
Registration No. 54,083